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i2 TECHNOLOGIES US, INC. ONE i2 PLACE, 11701 LUNA ROAD DALLAS, TX 75234			APPLE, KIRSTEN SACHWITZ	
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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/548,466

Applicant(s)

DALEL ET AL.

Examiner

Kirsten S. Apple

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-92, 95 and 96 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-92 & 95-96 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### ***Claim Objections***

Claim 96 objected to under 37 CFR 1.75 as being a substantial duplicate of claim 95. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 103***

The Examiner has read and reviewed all of the information provided by the Applicant. The examiner rejects as final claims 1-92 & 95-96 under 35 USC 103.

The Applicant attention is re-drawn to the following:

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5-7, 11, 15, 16, 19-21, 25, 29-32, 35-37, 41, 42, 45, 46, 49-51, 55, 56, 63, 64, 67-69, 73, 74, 78, 79, 82-84, 88, 89, and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al. (EP 0770 967) (hereafter Schmidt), in view of Herz et al. (US Patent No. 5,754,938) (hereafter Herz) AND Dr. Pattie Maes et al., "AGENTS THAT BUY AND SELL", Communications of the ACM, March 1999, Vol. 42, No. 3 (hereafter Maes).

**Claims 1 and 15;** Schmidt discloses a method of supply chain activity optimization involving multiple enterprises at a buyer and seller computers, comprising:

accessing a forecasted demand for at least one item (SEE Schmidt Page 3, line 25-page 4, line 8);

generating one or more proposed flexible trade contracts using the forecasted demand for the item (SEE Schmidt Page 28, lines 35-40);

communicating each proposed flexible trade contract to a seller computer (SEE Schmidt "...generates replenishment ...report...", page 20, line 50-page 30, line 41); and executing a flexible trade contract created after acceptance of the proposed flexible trade contract at the seller computer (SEE Schmidt "...the execution started...", Page 30, line 43-page 32, line 38).

A tracking module operable to monitor the terms of the flexible trade contract (SEE Schmidt, page 3, line 47-54 "allow... vendor to plan.. allow forecasts")

Schmidt also disclose "receiving modification of the contracts", "proposed flexible trade contracts", "created a flexible trade contract" (SEE Schmidt Page 30, lines 1923), "evaluating a modified contract" (SEE Schmidt Page 28, line 39, and page 30, line 20), and "redefinition of requirements of the contract" (SEE Schmidt Page 28, line 46), as well as "price discounts" in the framework of a negotiation (SEE Schmidt Page 51, line 55).

However, Schmidt does not explicitly disclose that those steps are made "automatically and without user input", i.e. steps are conducted automatically by the seller computer and the buyer computer.

However, Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" (SEE Herz Col. 61, lines 18-49 "A further use of the capabilities of this system is to manage a user's investment portfolio." ... "The user's past investment behavior is characterized in the user's search profile set. or target profile interest summary, and this information is used to match the user with stock opportunities (target objects) similar in nature to past investments." ... "Furthermore, the user can set filter parameters so that the system can monitor stock prices and automatically take certain

actions, such as placing buy or sell orders, or paging the user with a notification, when certain stock performance characteristics are met." . . . "Thus, the system can immediately notify the user when a selected stock reaches a predetermined price, without the user having to monitor the stock market activity").

Maes teaches; "Software agent technologies can be used to automate several of the most time-consuming stages of the buying process" . . . "In other markets such as **stocks**, automobiles, and **fine art**), the negotiation of price and other aspects to the buying are integral to the buying process" . . . . "In automated negotiation, computational agents find and prepare **contracts** on behalf of the real-world parties they represent. This automation saves human negotiation time, and computational agents are often better at finding deals in combinatorially and strategically complex settings. . . . When different users have different preferences, automated negotiation can rapidly find solutions that improve the utility for all parties" . . . " Kabah's agents automate much of the merchant-brokering and negotiation stages for both buyers and sellers".

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract, which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

**Claims 2 and 16:** Schmidt I Herz I Maes disclose the methods of Claims 1 and 15. Schmidt also explicitly discloses wherein each proposed flexible trade contract is selected from the group consisting of a forward contract, an option contract, and a flexible forward contract {SEE Schmidt option contract, Page 28, lines 35-40}.

**Claim 5 and 19:** Schmidt I Herz I Maes disclose the methods of Claims 2 and 16.

Schmidt also discloses wherein each option contract comprises an option, the option comprising at least one parameter selected from the group consisting of a maximum quantity of the item that a seller is obligated to supply; a maximum number of item types that the seller is obligated to supply; and a maximum number of locations where the item must be provided (SEE Schmidt Page 81, lines 4-19, "...maximal inventory...").

**Claims 6 and 20:** Schmidt I Herz I Maes disclose the method of Claims 5 and 19.

Schmidt also discloses wherein each option contract comprises a unit option contract, and wherein the parameter is selected from the group consisting of a maximum of one unit of the item; a maximum of one item type; and a maximum of one location (SEE Schmidt Page 81, lines 20-33).

**Claim 7 and 21:** Schmidt I Herz I Maes disclose the methods of Claims 5 and 19.

Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (SEE Schmidt Page 81, line 34-page 82, line 32).

**Claims 11 and 25:** Schmidt I Herz I Maes disclose the methods of Claims 1 and 15.

Schmidt also discloses: receiving an alternate contract term from the seller computer (SEE Schmidt Page 50, lines 45-57); accepting the alternate contract term without user input if the alternate contract term falls within a range of acceptable contract terms (SEE Schmidt Page 50, lines 58-60); and identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (SEE Schmidt Page 50, line 60- Page 51, line 15). However, Schmidt does not explicitly disclose that those steps are made "automatically and without user input, i.e. steps are conducted automatically by the seller computer and the buyer computer.

Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" (SEE Herz Col. 61, lines 18-49). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract , which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

**Claims 29, 45, 63, 58, and 78:** Schmidt I Herz I Maes discloses a supply manager for supply chain activity optimization involving multiple enterprises, comprising:

- a) a negotiation module operable to receive one or more proposed flexible trade contracts from a buyer computer (SEE Schmidt Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39 - 44);
- b) each proposed flexible trade contract reflecting a buyer's forecasted demand for at least one item (SEE Schmidt Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39 - 44);
- c) the negotiation module also operable to accept the proposed flexible trade contract to create a flexible trade contract (SEE Schmidt Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39 - 44); and
- d) an execution module operable to execute the flexible trade contract (SEE Schmidt Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39-44).

A tracking module operable to monitor the terms of the flexible trade contract (SEE Schmidt, page 3, line 47-54 "allow... vendor to plan.. allow forecasts")

However, Schmidt does not explicitly disclose that those steps are made "automatically and without user input", i.e. steps are conducted automatically by the seller computer and the buyer computer.

However, Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" (SEE Herz Col. 61, lines 18-49 "A further use of the capabilities of this system is to manage a user's investment portfolio." . . . "The user's past investment behavior is characterized in the user's search profile set or target profile interest summary, and this information is used to match the user with stock opportunities (target objects) similar in nature to past investments." . . . "Furthermore, the user can set filter parameters so that the system can monitor stock prices and automatically take certain actions, such as placing buy or sell orders, or paging the user with a notification, when certain stock performance characteristics are met." . . . "Thus, the system can immediately notify the user when a selected stock reaches a predetermined price, without the user having to monitor the stock market activity" ).

Maes teaches; "**Software** agent technologies can be used to automate several of the most time-consuming stages of the buying process"..."In other markets such as **stocks**, automobiles, and **fine art**), the negotiation of price and other aspects to the buying are integral to the buying process"....."In automated negotiation, computational agents find and prepare **contracts** on behalf of the real-world parties they represent. This automation saves human negotiation time, and computational agents are often better at finding deals in combinatorially and strategically complex settings. . . .When different users have different preferences, automated negotiation can rapidly find solutions that improve the utility for all parties" . . . " Kabah's agents automate much of the merchant-brokering and negotiation stages for both buyers and sellers".



Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract, which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

**Claims 30:** Schmidt I Herz I Maes disclose a procurement -manager for multi-enterprise optimization, comprising: a negotiation module operable to receive a forecasted demand for at least one item (See Schmidt Page,3; line 25-page 4, line 8)

**Claim 31:** Schmidt I Herz I Maes disclose the method of procurement of Claim 29. Schmidt also discloses wherein the negotiation module receives the forecasted demand from a user, and a forecast module operable to determine the forecasted demand (SEE Schmidt Page 82, line 11-page 83, line 20, and page 84, line 21-page 87, line 50).

**Claims 32, 46, 64, and 79:** Schmidt I Herz I Maes disclose the methods of procurement of Claims 29, 45, 63, and 78. Schmidt also discloses wherein each proposed flexible trade contract is selected from the group consisting of a forward contract, an option contract, and a flexible forward contract (SEE Schmidt Page 28, lines 35-40).

**Claims 35, 49, 67, and 82:** Schmidt I Herz I Maes disclose the method of procurement of Claims 32, 46, 64, and 79. Schmidt also discloses wherein each option contract comprises an option, the option comprising at least one parameter selected from the group consisting of a maximum quantity of the item that a seller is obligated to supply; a maximum number of item types that the seller is obligated to supply; and a maximum number of locations where the item must be provided (SEE Schmidt Page 81, lines 4-19, "maximal inventory" }.

**Claims 36, 50, 68, and 83:** Schmidt | Herz | Maes disclose the method of Claims 35, 49, 67, and 82. Schmidt also discloses wherein each option contract comprises a unit option contract, and wherein the parameter is selected from the group consisting of a maximum of one unit of the item; a maximum of one item type; and a maximum of one location { SEE Schmidt Page 81, lines 20-33).

**Claims 37, 51, 69, and 84:** Schmidt | Herz | Maes disclose the method of Claims 35, 49, 67, and 82. Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (SEE Schmidt Page 81, line 34-page 82, line 32):

**Claims 41 and 42:** Schmidt / Herz / Maes disclose the procurement of Claims 29 and 45. Schmidt also discloses: receiving an alternate contract term from the seller computer (SEE Schmidt page 50, lines 45-57); accepting the alternate contract term without user input if the alternate contract term falls within a range of acceptable contract terms (SEE Schmidt page 50, lines 58-60); and identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (SEE Schmidt page 50, line 60-col. 51, line 15).

**Claims 55, 56, 73, 74, 88, and 89:** Schmidt | Herz | Maes disclose the procurement of Claims 29, 45, 63, and 78. Schmidt also discloses: receiving an alternate contract term from the seller computer (SEE Schmidt Page 50, lines 45-57); accepting the alternate contract term without user input if the alternate contract term falls within a range of acceptable contract terms (SEE Schmidt Page 50, lines 58-60); and identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (SEE Schmidt Page 50, line 60-col. 51, line 15). However, Schmidt does not explicitly

disclose that those steps are made "automatically and without user input", i.e. steps are conducted automatically by the seller computer and the buyer computer.

Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" SEE Herz Col. 61, lines 18-49). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract, which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

**Claim 91:** Schmidt I Herz I Maes anticipates the software of Claim 78, However, the references do not explicitly disclose wherein receiving one or more proposed flexible trade contracts from the buyer computer system comprises receiving one or more proposed flexible trade contracts from the buyer computer system through an intermediary. Official notice is taken that the step to negotiate through an intermediary is all and well know within the art. Therefore, it would have been obvious to use the service of an intermediary in the Schmidt I Herz I Maes invention. One would have been motivated to use the service of an intermediary, i.e. a blocker, in order to guarantee the anonymity of the operators-, and or a high standard of professionalism in the real estate operations, where there are different roles and issues in the different cities, such as "sponsorization" in a new condo building in New York city, etc.

3. Claims 3, 4, 8-10, 12-14, 17, 18, 22-24, 26-28, 33, 34, 38-40, 43, 44, 47, 48, 52-54, 57-62, 65, 66, 70-72, 75-77, 80, 81, 85-87, 90, and 92 and 95-96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al. (EP 0770 967) (hereafter Schmidt) in view of Herz et al. (US Patent No. 5,754,938) (hereafter Herz) AND Dr. Pattie Maes et al. , "AGENTS

THAT BUY AND SELL<sup>o</sup>, Communications of the ACM, March 1999, Vol. 42, No. 3 (hereafter Maes ), and further view of Shepherd (U.S. Patent No. 5,970,479).

**Claims 3 and 17:** Schmidt I Herz I Maes disclose the method of Claims 2 and 16. However, the references do not explicitly disclose wherein each forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply. Shepherd discloses such as a step (SEE Shepherd Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt I Herz I Maes method. One would have been motivated to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

**Claims 4 and 18:** Schmidt I Herz I Maes I Shepherd disclose the method of Claims 3 and 17. However, Schmidt does not explicitly disclose wherein each forward contract comprises a unit forward contract, and wherein the buyer is obligated to purchase and the seller is obligated to supply a quantity of one unit of the item. Shepherd discloses such as a step (SEE Shepherd Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt I Herz I Maes method. One would have been motivated to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

**Claims 8 and 22:** Schmidt I Herz I Maes I Shepherd disclose the method of Claims 2 and 16 above. Shepherd discloses wherein each flexible forward contract comprises a total quantity of one or more items that a buyer is obligated to purchase and a seller is obligated to supply; and a plurality of subcontracts each comprising an option, each option comprising at least one parameter selected from the group consisting of a range of

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quantities for one item; a range of quantities for one item type; and a range of quantities for one location where the item must be provided (SEE Shepherd Col. 49, lines 27-40 and col. 50, lines 10-27). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt I Herz I Maes I Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

**Claims 9 and 23:** Schmidt I Herz I Maes I Shepherd disclose the method of Claims 8 and 22 above. Shepherd discloses wherein each flexible forward contract comprises a unit flexible forward contract, and wherein the total quantity is one unit and the parameter is selected from the group consisting of a range of zero to one unit for the item; a range of zero to one unit for the item type; and a range of zero to one unit for the location (SEE Shepherd Col. 55, lines 60-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt I Herz I Maes I Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

**Claims 10 and 24:** Schmidt I Herz I Maes I Shepherd disclose the method of Claims 8 and 22 above. Shepherd discloses wherein each flexible forward contract comprises an exercise period after the execution of the flexible forward contract during which the buyer must exercise the option (SEE Shepherd Col. 55, line 65-col. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt/Herz/Maes/Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

**Claims 12 and 26:** Schmidt I Herz I Maes disclose the method of Claims 1 and 15. However, the references do not explicitly disclose updating the forecasted demand for the

item; and exercising an option in the flexible trade contract based on the updated forecasted demand. Shepherd discloses such steps (SEE Shepherd Col. 55, lines 6064). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt I Herz I Maes method. One would have been motivated to use such a step in order to minimize the risk.

**Claims 13, 14, 27, 28 , 44, 58, 75 and 76:** Schmidt I Herz I Maes disclose the method of Claims 1, 15, 29, 45 and 63. However, Schmidt does not explicitly disclose calculating a penalty if a seller fails to comply with a term of the flexible trade contract nor wherein communicating each proposed flexible trade contract to the seller computer comprises communicating each proposed flexible trade contract to the seller computer through an intermediary. Shepherd discloses such steps (SEE Shepherd Col. 55, line 65-col. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt method. One would have been motivated to use such a step in order to minimize the risk.

**Claims 33, 47, 65, and 80:** Schmidt I Herz I Maes disclose the method of procurement of Claims 32, 46, 64, and 79. However, the reference does not explicitly disclose wherein each forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply. Shepherd discloses such as a step (SEE Shepherd Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt I Herz I Maes method. One would have been motivated, to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

**Claims 34, 48, 66, and 81:** Schmidt I Herz I Maes I Shepherd disclose the method of procurement of Claims 33, 47, 65, and 80. Schmidt also discloses wherein each forward contract comprises a unit forward contract, and wherein the buyer is obligated to purchase and the seller is obligated to supply a quantity of one unit of the item (SEE Schmidt Page 81, lines 20-33).

**Claims 38, 52, 70, and 85:** Schmidt I Herz I Maes disclose the method of Claims 32, 46, 64, and 79. Schmidt also discloses wherein each flexible forward contract comprises a total quantity of one or more items that a buyer is obligated to purchase and a seller is obligated to supply; a range of quantities for one item; a range of quantities for one item type; and a range of quantities for one location where the item must be provided (SEE Schmidt page 96, lines 15-27). However, Schmidt does not explicitly disclose a plurality of subcontracts each comprising an option, each option comprising at least one parameter. Shepherd discloses such as a step (SEE Shepherd Col. 49, lines 27-col. 50, line 27). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt/Herz method.

**Claims 39, 53, 71, and 86:** Schmidt I Herz I Maes I Shepherd disclose the procurement manager of Claims 38, 52, 70, and 85. Schmidt also discloses wherein each flexible forward contract comprises a unit flexible forward contract, and wherein the total quantity is one unit and the parameter is selected from the group consisting of a range of zero to one unit for the item; a range of zero to one unit for the item type; and a range of zero to one unit for the location (SEE Schmidt Page 66, line 18-page 67, line 50).

**Claims 40, 54, 72, and 87:** Schmidt I Herz I Maes I Shepherd- disclose the procurement manager of Claims 38, 52, 70, and 85. Schmidt also discloses wherein each

option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (SEE Schmidt Page 81, line 34 page 82, line 32)..

**Claims 43, 57, and 90:** Schmidt I Herz I Maes disclose the method and software of procurement of Claims 29, 45, 63, 78. However, the references does not explicitly disclose tracking module operable to calculate a penalty if a seller fails to comply with a term of the flexible trade contract nor a tracking module operable to calculate a penalty if a seller fails to comply with a term of the flexible trade contract. Shepherd discloses such steps (SEE Shepherd Col. 55, line 65co1. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt/Herz/Maes method. One would have been motivated to use such a step in order to minimize the risk.

**Claims 59, 60, 61, 62, 77, and 92:** Schmidt / Herz / Maes / Shepherd disclose the methods and software of procurement of Claims 1, 15, 29, 45, 63, and 79. Herz also discloses a negotiation, communicating with the seller computer system in a series of rounds in which the buyer computer system and the seller computer system successively propose one or more counter-modifications of the proposed flexible trade contract for automatic evaluation and possible acceptance to create the flexible trade contract (SEE Herz "...Automatically take certain actions...", means the capability to participate in more of one round of the negotiation, Col. 61, lines 19-50). Therefore, it would have been obvious to one having ordinary skill in the art in the time the invention was made to utilize such as a step in the Schmidt I Herz I Maes I Shepherd invention. One would be motivated to include such as a step in order to facilitate the quickly conclusion of the negotiation,

**Claim 95 & 96:** Schmidt / Herz / Maes / Shepherd disclose a system for supply chain activity optimization involving multiple enterprises, the system operable to:



Generate, a buyer computer system, one or more proposed flexible trade contracts for at least one item using a forecasted demand received from a seller computer system and communicate the proposed flexible trade contract to the seller computer system to initiate an automatic collaborative negotiation;

Receive the proposed flexible trade contract at the seller computer system and evaluate the proposed flexible trade contract to determine whether the proposed flexible trade contract is acceptable;

Automatically subsequent to evaluating the proposed flexible trade contract at the seller computer system, as part of the automatic collaborative negotiation;

If the proposed flexible trade contract is acceptable, accept the proposed flexible trade contract; and

If the proposed flexible trade contract is not acceptable, generate at least one modification of the proposed flexible trade contract and communicate the at least one modification of the proposed flexible trade contract and communicate the at least one modification to the buyer computer system;

Receive the at least one modification of the proposed flexible trade contract at the buyer computer system and evaluate the at least one modification to determine whether the modification is acceptable;

If the at least one modification of the proposed flexible trade contract is acceptable, accept the modified proposed flexible trade contract; and

If the at least one modification of the proposed flexible trade contract is not acceptable, communicate with the seller computer system in a series of rounds in with the buyers computer system and the seller computer system successively proposed one or more further counter-modifications of the proposed flexible trade contract for automatic evaluation and

possible acceptance to create a flexible trade contract based on the proposed flexible trade contract

Subsequent to execution of a flexible trade contract created based on the proposed flexible trade contract as a result of the automatic collaborative negotiation, taking one or more actions to perform under the executed flexible trade contract; and

Subsequent to execution of the flexible trade contract created based on the proposed flexible trade contract as a result of the automatic collaborative negotiation, taking one or more actions to enforce the executed flexible trade contract, as was discussed above in Claims 1, 15, 29, 45, 63, and 78.

### ***Response to Arguments***

Applicant's arguments filed March 28, 2006 have been fully considered but they are not persuasive.

In particular, and respect to Claim 27 the Applicant argued:

"Schmidt has nothing to do with amended independent claim 29 regarding a 'negotiation module'. Rather Schmidt discloses a vendor-managed replenishment contract."

The Examiner refutes the argument made by the Applicant and draws the attention to Schmidt page 3, line 28 – page 4, line 8. In particular the system "will reconcile the demand and supply" this is done by evaluation or *negotiation* of the inputs. In addition, the system will allow "scenarios" and "forecasts" these object will be used by a "decision support system."

The Applicant additionally argued, "Herz has nothing to do with... claim 29... regarding 'automatic and without user input'."

The Examiner refutes the argument made by the Applicant and draws the attention to Herz column 61, line 18-49, in particular "automatically take certain actions, such as placing buy or sell orders" and "without the user having to monitor the stock market activity." The examiner additionally argues that in Herz "automatically taking certain actions" is a type of communication. The Examiner would like to additionally point out that that pure "automation" or a know process does not make it patentable (see *in re Venner*).

The Applicant additionally argued, "Maes has nothing to do with Claim 29.... Regarding 'automatic and with out user input...'

The Examiner refutes the argument made by the Applicant and draws the attention to Maes (page 82) "Buying agents automatically collect (*generate and communicate proposed contract*) information on vendors and precuts that may fit the needs of a company, evaluate the various offerings, make a decision on which merchants and products to investigate, negotiate (*receiving and evaluating modifications*) the terms of transactions with these merchants, and finally place orders (*accepting*) and make automated payments."

"The Applicants further submit that these purported advantages relied on by the Examiner is nowhere disclosed, taught, or suggested in Schmidt, Herz, and Maes.

The Examiner refutes this argument by the Applicant and respectively re-points to Hertz column 1 line 44-46. Hertz identifies the problem that the patent is address is to "enable a user to access information of relevance and interest to the user without requiring the user to expend an excessive amount of time and energy"

In addition, Maes direct says (page 81): "Software agent technologies can be used to automate several of the most time-consuming stages of the buying process."

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


### ***Contact Details***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kirsten S. Apple whose telephone number is 571.272.5588. The examiner can normally be reached on Monday - Friday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sam Sough can be reached on 571.272.6799. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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